

**CITY OF BIGGS**  
**PLANNING STAFF REPORT**

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TO: Honorable Mayor and Members of the City Council

DATE: February 28, 2011

FROM: Scott Friend, AICP, City Planner

THROUGH: Pete Carr, City Administrator

SUBJECT: Placement and Location of Fences

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**SUMMARY**

Working through the City Administrator, planning staff has been directed by the City Council to provide the Council with potential options which would allow for the construction of fences closer to the public street or public sidewalk, within City rights-of-way, in front and street side yard areas. Staff has presented three option to the Council for consideration and is seeking direction from the Council regarding which approach it might favor and what, if any, additional follow-up actions are desired to address this matter.

**BACKGROUND / DISCUSSION**

Section 14.60.080 of the Biggs Municipal Code (BMC) establishes the development standards for fences within the City (*attached*). The fence development standards established within Section 14.60.080 focus primarily on the issue of height and less on the issue of fence placement. In general, fences can be up to six (6) feet in side and rear yards and up to four (4) feet in height in front yards. Property line setbacks are not required for fences. Currently, as long as a proposed fence meets height and material requirements, it can be constructed adjacent to the perimeter of the property.

At the January 24 meeting of the City Council, the Council directed Staff to provide options its consideration outlining options that would allow for fences to be located closer to the street or sidewalk in certain situations. As fences are currently allowed to be constructed at the property line, this discussion necessarily involves the issue of the placement of fences within the public right-of-way as a method of reducing the distance from the fence to the street or sidewalk.

Staff has reviewed the provisions of the Biggs Municipal Code on this issue, discussed this issue with City Staff, and reviewed the provisions of other agency fence codes and believes that it is appropriate to keep private fences out of the public right-of-way as is currently the practice of the City. However, staff has provided the following options for consideration by the Council as directed. The following recommendations are intended to begin a Council discussion to determine how the Council would like staff to proceed on this matter and are provided as options for consideration and

debate. If the Council directs staff to pursue further consideration of this, or other potential options, staff will return at a subsequent meeting with additional information and/or additional Code language as necessary.

The initial options presented for discussion are as follows:

- 1) **Return Excess ROW to Property Owners:** If extra right-of-way exists that is not being utilized by the City, the excess right-of-way area could be returned to adjacent property owners by vacating the unused land dedicating it back to the adjacent owners. This would effectively reduce the distance of the fence required behind the sidewalk or street. An example of a situation where this would be possible would be Second Street south of B Street. At this location, the existing right-of-way width is 70'. The City's Circulation Plan would only require a 60' right-of-way width at this location. As such, there is an "extra" five (5) feet of right-of-way on each side of the street at this location that could be returned to the adjacent property owners and not negatively affect street standards or conflict with the General Plan. While valid at one or two locations in the City, this approach would provide only a minimal number of opportunities for modifying fence locations in this and other areas of the City as this condition only exists for very limited distances in only this location.

It is noted that the effort to vacate and return unused right-of-way back to the adjacent property owners would require substantial effort by the City Engineer to identify, delineate, and record maps and other documents in order to return the excess right-of-way area.

- 2) **Issuance of an Encroachment Permit:** Applicants desiring to undertake work within the City right-of-way must first obtain an Encroachment Permit from the City. These permits are issued for construction tasks to include the installation of driveways, building sidewalks, and connecting private utilities to the City utility system. The City requires a permit to undertake this work to ensure that work done by private parties on City property is done properly and does not unnecessarily harm City facilities and services. Currently, Encroachment Permits are issued by the Public Works Superintendant working with the City Engineer. Although Encroachment Permits could be issued for construction of fences within the right-of-way -- if it was desired to allow fences to be located on the public right-of-way -- permits of this type were not created to address land use or setback issues. Thus, the existing Encroachment Permit process would need to be modified to address new issues associated with fences and their approval.
- 3) **Administrative Use Permit:** This option would create a new permit process and permit, which would allow for placement a private improvement (fence) within the public right-of-way. In order to achieve this, Council would be required to adopt a text amendment to the Biggs Municipal Code to establish this authority. Staff would anticipate that this new process would then result in the creation of specific standards to address issues of location, height, hazards, etc... Administrative permit processes generally are non-discretionary staff-approvals based upon discreet and identifiable standards. If the Council directed staff to pursue this option, staff would return to the Council with additional details concerning standards and code changes necessary to create this process.

Staff recommends at this time that if the Council directs staff to pursue this option that direction is provided to include the preparation of an indemnification agreement releasing

the City from liability for the placement of private fences on City-owned property. Additionally, staff would suggest that such an indemnity agreement also include a waiver provision stating that the permit holder acknowledges that the private improvement is located on private property and acknowledging that if the City ever desired to, or needed to remove the fence due to a street or public works project, that the City would be able to do so with no obligation to repair or replace the fence and acknowledging that the fence may be precluded from reconstruction as a result of the public project.

## **STAFF RECOMMENDATION**

As previously stated, staff believes that the City's current standards are reasonable and appropriate and reflect the common practice of not allowing private improvements within the public right-of-way. However, if the Council directs staff to pursue an option to allow for the construction and placement of fences in the right-of-way, staff recommends that Council consider the option of an administrative use permit for this purpose.

### **Attachments:**

- Attachment A: BMC Section 14.60.080 - Fence Development Standards

**Chapter 14.60**  
**DEVELOPMENT STANDARDS – GENERAL**

Section:

14.60.080 Fences and landscaping – General height limitations.

**14.60.080 Fences and landscaping – General height limitations.**

- (1) On all lots except double frontage and key lots, fences and similar obstructions shall not exceed four feet in height in front yards, nor six feet in height in any required rear or side yard, unless additional height is authorized by a use permit issued pursuant to Chapter 14.90 BMC (Exceptions). No fence authorized under the provisions of Chapter 14.90 BMC (Exceptions) shall exceed six feet in height in any required front yard, or eight feet in height in any side or rear yard setback.
- (2) On double frontage lots, fences and similar obstructions shall not exceed four feet in height in front yards, nor six feet in height in any required rear or side yard, unless additional height is authorized pursuant to Chapter 14.90 BMC (Exceptions).
- (3) On key lots, fences and similar obstructions may be constructed within a required front yard setback area to match the height of an adjacent lot's legal existing side or rear yard fence.
- (4) No fence greater than six feet in height may be authorized by use permit where such fence would be located within 10 feet of a residential structure either within the subject parcel or on an adjacent residential property.
- (5) No fence, wall or other improvement within the sight distance zone, as defined in Chapter 14.10 BMC, shall exceed three feet in height. [Ord. 320 § 1, 1999]
- (6) Fence, wall or similar barrier heights may be reduced from standards noted in Section 1, 2 and 3 above, to address non-intersection sight visibility concerns where it is determined that the fence, wall or barrier poses a hazard or safety risk to a public street, right-of-way or driveway.
- (7) In no case shall a fence exceeding three feet in height be located closer than 15 feet from the right-of-way in a front or street side-yard area. [Ord. 383, 2009; Ord. 320, 1, 1999]